

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

BOSTON AND MAINE CORPORATION,

Plaintiff,

v.

CIVIL ACTION No. 05-11656-RCL

MASSACHUSETTS BAY
TRANSPORTATION AUTHORITY,

Defendant.

**AFFIDAVIT OF ALICIA B. MCDEVITT IN SUPPORT OF DEFENDANT
MASSACHUSETTS BAY TRANSPORTATION AUTHORITY'S
MOTION FOR PARTIAL SUMMARY JUDGMENT**

I, Alicia B. McDevitt, depose and state as follows:

1. I am admitted to the bars of the Supreme Judicial Court of Massachusetts, the United States District Court for the District Court of Massachusetts and the United States Court of Appeals for the First Circuit. I am an associate in the law firm of Foley Hoag LLP and am counsel for Massachusetts Bay Transportation Authority ("MBTA").

2. In my role as counsel for the MBTA in the above-captioned lawsuit, I am familiar with the documents attached hereto.

3. Attached as Exhibit 1 is a true and accurate copy of the Phase II Comprehensive Site Assessment prepared by GZA GeoEnvironmental, Inc. dated August 1991 (without attachments).

4. Attached as Exhibit 2 is a true and accurate copy of the Complaint for Enforcement of Bankruptcy Consummation Order, Injunctive Relief and Contempt initiating the present lawsuit dated August 10, 2005.

5. Attached as Exhibit 3 is a true and accurate copy of a report entitled, "A Brief Background of Boston Engine Terminal Oil Pollution Problems" prepared by Lawrence B. Boyd (Boyd Associates) dated October 22, 1986.

6. Attached as Exhibit 4 is a true and accurate copy of excerpts of the deposition transcript transcribed at the April 19, 2006 deposition of James R. Henneman (the "Henneman Deposition").

7. Attached as Exhibit 5 is a true and accurate copy of excerpts of the deposition transcript transcribed at the April 18, 2006 deposition of Roger D. Bergeron (the "Bergeron Deposition").

8. Attached as Exhibit 6 is a true and accurate copy of excerpts of the deposition transcript transcribed at the March 29, 2006 deposition of Richard H. House (the "House Deposition").

9. Attached as Exhibit 7 is a true and accurate copy of the Operating Agreement between Robert W. Meserve and Benjamin H. Lacy, Trustees of the Property of Boston and Maine Corporation ("B&M") and MBTA dated March 26, 1976.

10. Attached as Exhibit 8 is a true and accurate copy of the Operating Agreement between the Robert W. Meserve and Benjamin H. Lacy, Trustees of the Property of B&M and the MBTA dated February 23, 1982 (without attachments).

11. Attached as Exhibit 9 is a true and accurate copy of excerpts of the deposition transcript transcribed at the April 26, 2006 deposition of David W. Dunn (the "Dunn Deposition").

12. Attached as Exhibit 10 is a true and accurate copy of a letter from R. Bradley and R. Chalpin (DEQE) to H. Knott (Amtrak) dated April 10, 1989 regarding Notice of

Responsibility/Request for Technical Information Pursuant to M.G.L. Chapter 21E and 310 CMR 40.00.

13. Attached as Exhibit 11 is a true and accurate copy of the Affidavit of Adeline Delbene, Keeper of the Records for DEP dated March 8, 2006 (the “Delbene Affidavit”).

14. Attached as Exhibit 12 is a true and accurate copy of Defendant MBTA’s Supplemental Objections and Responses to Plaintiff’s First Set of Interrogatories dated March 27, 2006.

15. Attached as Exhibit 13 is a true and accurate copy of the Affidavit of Jane A. Chmielinski dated May 23, 2006 (the “Chmielinski Affidavit”).

16. Attached as Exhibit 14 is a true and accurate copy of the Affidavit of Michael A. Diggin dated May 24, 2006 (the “Diggin Affidavit”).

17. Attached as Exhibit 15 is a true and accurate copy of the letter from R. Bradley and R. Chalpin (DEQE) to P. McKenna (Amtrak) dated July 31, 1989 regarding Referral to Site Management Branch.

18. Attached as Exhibit 16 is a true and accurate copy of the Phase I Limited Site Assessment prepared by Goldberg-Zoino & Associates (“GZA”) dated April 1989 (without attachments).

19. Attached as Exhibit 17 is a true and accurate copy of the report entitled, “Phase V Completion Report and Class C Response Action Outcome Statement” prepared by GZA GeoEnvironmental, Inc. dated October 2002 (without attachments).

20. Attached as Exhibit 18 is a true and accurate copy of a letter from J. Stevens to R. Culliford dated May 4, 2004 regarding Notification under Chapter 21E, Section 4A; Boston Engine Terminal, Somerville, Massachusetts.

21. Attached as Exhibit 19 is a true and accurate copy of a letter from R. Culliford to J. Stevens dated June 18, 2004 regarding Notification under Chapter 21E, Section 4A; Boston Engine Terminal, Somerville, Massachusetts (without attachments).

I declare under penalty of perjury that the foregoing is true and correct.

/s/ Alicia B. McDevitt
Alicia B. McDevitt

Dated: June 2, 2006